



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 826 OF 2016

1. Smt. Madhubai W/o Kishansingh Thakur,
Age: 49 years, Occu: Household,
2. Verrusingh S/o Kishansingh Thakur,
Age: 25 years, Occu: Nil,
3. Sheetalsingh S/o Kishansingh Thakur,
Age: 21 years, Occu: Nil,
4. Seema W/o Sararsingh Thakur,
Age: 31 years, Occu: Nil
All R/o. Near S. Bridge Hanuman
Mandir, Byculla (W) Mumbai-27.

...APPELLANTS
(Orig. Claimants)

VERSUS

Union of India,
Through General Manager,
South Central Railways,
Secundrabad. (AndhraPradesh)

...RESPONDENT

Mr. P.S. Agrawal Advocate for appellants
Mr. M.N. Navandar, Advocate for the respondent

.....

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 10th SEPTEMBER, 2024
PRONOUNCED ON : 4th OCTOBER, 2024

JUDGMENT :

1. Heard.
2. **Admit.** With the consent of parties, taken up for final hearing.

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3. This appeal filed by claimants under Section 23 of the Railways Claims Tribunal Act, 1987 challenges judgment and award dated 14.07.2015 passed by Railway Claims Tribunal, Nagpur in Case No. OA(llu)/NGP/2012/0193.

4. Kishansingh s/o Biharisingh Thakur on 30.08.2011 boarded Nanded-Hyderabad Train No. 57564 from Nanded railway station for going to Hyderabad. In the midnight of 30.08.2011 and 31.08.2011, during the course of travelling from Nanded to Hyderabad, he fell down from the running train at K.M. No. 393/800 near Umri railway station, due to sudden jerk and came under the wheels of train and died on the spot. On 31.08.2011 at 8.30 hrs, Station Master-I, Umri issued memo to GRP official, Umri on the information of Bhimrao Piraji, keyman at 6.30 hrs, who noticed unknown body lying near the track. Then GRP officials reached on the spot. Claimants, therefore, filed claim contending that death of the deceased has occurred in an untoward incident and claimed compensation of Rs. 4,00,000/-.

5. Railways contested the claim by filing written statement and denied that the death has occurred in an untoward incident. It is contended that deceased was not

bonafide passenger.

6. The Tribunal after assessing the material on record and hearing the parties dismissed the claim. Hence, the present appeal.

7. Heard learned advocate for claimants and learned advocate for the railways. Perused the record with the assistance of both the learned advocates for the parties.

8. Learned advocate for the claimants contends that body was found lying next to the railway track, therefore, it is clear that death has occurred in an untoward incident. Merely because ticket was not found, it cannot be said that deceased has not died in an untoward incident. He assailed the findings recorded by the Tribunal stating that findings are contrary to the record and settled legal position. Hence, first appeal deserves to be allowed. In support of his submissions, he relied on decision of this Court in First Appeal No. 169 of 2016, ***Union of India vs. Rina Devi***, AIR 2018 SC 2362, and ***Mira vs. Union of India, Through its General Manager***, AIROnline 2019 Bom 940.

9. Learned advocate for the Railways, on the other hand, supported the impugned judgment and award. He submits

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that no ticket was found on the dead body, hence, Tribunal is right in concluding that deceased was not a bonafide passenger. He submits that at the night time doors of bogies are locked. Hence, there is no possibility of deceased falling from the running train. Next submission is in the cause title of the first appeal Byculla address is given, therefore, it is not believable that deceased has purchased ticket from Nanded. He therefore submits that there is no merit in first appeal and it may be dismissed.

10. It is a matter of record that Bhimrao Piraji, railway keyman while inspecting the railway track found one dead body of unknown person, who had fallen from unknown train at K.M. No. 393/800-900 and intimation to that effect was given by him to the Station Master for further necessary action. AD Report given by Shri. Nivaruthi Sontake to Station Master, Railway Station, Umri about the dead body also mentions that deceased had fallen down from railway and expired.

Spot panchnama conducted in AD No. 81/2011 shows that dead body was found 1 feet away from the railway track. Inquest panchnama also mentions that "*said deceased person fallen down from unknown train and his both the hands*

are separated from wrists and died due o seriously injured." Post mortem report depicts lacerated wound to brain and lacerated wound to the right leg & hand. The death is due to massive hemorrhage lead to hypovolemic shock due to fracture of both the hands and tibia and fibula due to fall from train.

11. Accidental death summary report mentions that after completion of investigation conclusion of investigation is that *"the said deceased person Kishansingh Biharisingh Thair age 55 years, resident of Chirag Galli, Gadipura, Nanded on 30.08.2011 after taking railway ticket of Nanded Hyderabad 564 up train for travelling from Nanded to Hyderabad near KM No. 393/800 at Railway Station Umri died due to fallen down from the said train."*

12. During AD inquiry, statement of wife of deceased was recorded on 05.09.2011, wherein she has stated that her husband went to Hyderabad on 30.08.2011 in the night time for the purpose of carpenter work. He left the house at about 8.30 hrs and her son Virusingh accompanied him to drop him at the railway station. Her son Virusingh dropped him at railway station, Nanded and told her that he had obtained railway ticket and handed over it to his father and his father kept it in the bag.

He then left his father at Railway station, Nanded and returned home.

Statement of Virusingh son of deceased is recorded on the same day, who has stated that on 30.08.2011 his father wanted to go to Hyderabad by Nanded-Hyderabad train. So he along with his father went to Nanded railway station. He obtained railway ticket for Nanded to Hyderabad and handed over to his father, which was kept in the bag by his father. He then came back home.

13. In support of claim, Virusingh, son of deceased is examined who deposed as per his statement recorded during the AD inquiry. In cross examination, he has stated that he had purchased railway ticket worth Rs. 40/-, but he did not remember the ticket and train number. He did not see his father boarding any train at the station.

14. Railway examined Station Master and the keyman. The keyman has admitted in his cross examination that he has seen the dead body in the morning at 7.20 hrs whereas Nanded-Hyderabad passenger train passed during night time.

15. In view of aforesaid evidence, there is sufficient

material on record to show that deceased has died in an untoward incident happened during night of 30.08.2011 and 31.08.2011. Claimants have discharged their prima facie burden of proving that the death of deceased has occurred in an untoward incident and the burden then shifted on the Railways, which the Railways has failed to discharge. By examining son of deceased claimants have proved that he had purchased ticket for the train from Nanded-Hyderabad and handed over it to the deceased, which the deceased had kept in the bag and he then left the station. Nothing to disbelieve his version is brought on record during his cross examination. The dead body was found near the railway track and the investigation carried out during the accidental death inquiry also supports the case of the claimants that deceased died due to fall from running train.

16. In Rina Devi (supra), apex Court has held:

"We thus hold that mere presence of a body on the Railway premises will not be conclusive to hold that injured or deceased was a bona fide passenger for which claim for compensation could be maintained. However, mere absence of ticket with such injured or deceased will not negative the claim that he was a bona fide passenger. Initial burden will be on the claimant which can be discharged by filing an

affidavit of the relevant facts and burden will then shift on the Railways and the issue can be decided on the facts shown or the attending circumstances. This will have to be dealt with from case to case on the basis of facts found. The legal position in this regard will stand explained accordingly."

17. In ***Union of India vs. Nandabai Sheshrao Dangat and Others*** (2015) 6 Mh.L.J. 295, this Court at Nagpur Bench has observed:

"Merely because railway ticket was not recovered from dead body, it cannot be said that deceased was travelling without ticket. Possibility that ticket may have been lost during course of untoward incident cannot be ruled out and, therefore, presumption need to be drawn that the deceased was a bona fide passenger."

18. In ***Union of India vs. Bimala Pintho Tudu and Others***, (2012) 3 Mh.L.J. 883, wherein it is held;

"Fact that deceased was not detected as passenger travelling without ticket, would give rise to an inference that he was travelling with valid ticket. Unless the negative is proved or there is evidence may be, circumstantial in nature, that the deceased was not holding valid ticket, it would be desirable, to presume that deceased was authorized passenger."

Above observations support the case of the claimants.

19. The Tribunal has recorded a perverse finding that since the son of deceased has not seen him boarding the train and his statement is recorded by the police on 05.09.2011, after five days of the incident, why he did not give the statement to the police on the same day, on receipt of information on 01.09.2011 at 3.00 pm, regarding train number and name. It was not due to lapses or fault of the claimants that their statements are recorded by police after five days. The Tribunal erred in using this circumstance against claimants while dismissing the claim. The Tribunal has ignored the settled legal position that this is welfare legislation and claim is to be decided keeping in mind the object of this provision. If two interpretations are available then one favorable to the claimants has to be adopted. Claimants are not at fault because police recorded their statement five days later. This circumstance cannot be used against the claimants.

The Tribunal has further proceeded to observe that had deceased travelled by alleged train on the night of 31.08.2011, it is not possible that the dead body was not noticed

by any driver or guard of the various trains passing through the said track as it is one of the busiest track. This observation of the Tribunal is contrary to the record and merely because the dead body was not noticed by train drivers and guards, and nobody intimated about the dead body it does not mean that the accident did not occur in the night of 31.08.2011. The Tribunal has lightly brushed aside the testimony of Virusingh (A-1) saying that it does not inspire confidence and in the DRM's inquiry report and the conclusion drawn is that the deceased was not bonafide passenger as no railway ticket was recovered from him. As is observed supra, nothing is brought in the cross examination of Virusingh (A-1) to disbelieve his testimony. Therefore, the Tribunal has erred in disbelieving the said testimony and relying on DRM's inquiry report.

20. In the light of aforesaid discussion and the above rulings, finding recorded by the Tribunal that deceased was not bonafide passenger is perverse and same is unsustainable in law and facts of the case.

21. There is no merit in the contention of Railways that since in the cause title of first appeal address of Byculla is mentioned, therefore, it is not believable that deceased travelled

from Nanded to Hyderabad in the fateful night as in the AD inquiry address of the deceased is stated to be as Chirag Galli, Gadipura, Nanded.

22. For the aforesaid reasons, following order is passed:

ORDER

- (I) First Appeal is allowed with proportionate costs.
- (II) Impugned judgment and award dated 14.07.2015 passed by Railway Claims Tribunal, Nagpur in Case No. OA(Ilu)/NGP/2012/0193 is hereby quashed and set aside.
- (III) Claim Application No. OA(Ilu)/NGP/2012/0193 is allowed.
- (IV) Railways/Respondent shall pay compensation of Rs. 8,00,000/- inclusive of interest to claimants.
- (V) Compensation amount be deposited in the Tribunal within 12 weeks from the date of uploading of this judgment. On such deposit, claimants shall be entitled to withdraw the same.

[NITIN B. SURYAWANSHI, J.]